IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1218

LLOYD SMITH,

Petitioner,

versus

LOUIS J. MICHOT, SUPERINTENDENT OF EDUCATION, DEPARTMENT OF EDUCATION, STATE OF LOUISIANA,

Respondent.

PETITION ON BEHALF OF LLOYD SMITH FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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PETITION ON BEHALF OF LLOYD SMITH FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

This is an application for a writ of certiorari to the United States Court of Appeals, Fifth Circuit, as to its per curiam decision rendered on October 10, 1978, timely rehearing denied on November 6, 1978, affirming the dismissal of petitioner's original complaint by the United States District Court, Middle District of

Louisiana, but for different reasons. Petitioner's lawsuit is an action under 42 U.S.C. 1983, and the Fourteenth Amendment. Petitioner was dismissed as a career educator with the Department of Education of Louisiana and the termination of his employment was accompanied by publicly disseminated denigration of his honor, integrity and good repute as a public educator without a hearing or an opportunity for a hearing.

JURISDICTION

This application for a writ of certiorari invokes the jurisdiction of the court pursuant to 28 U.S.C.A. 1254; 28 U.S.C.A. 2101 and Supreme Court Rules 19, et seq.

QUESTION PRESENTED

Is a public employee entitled to injunctive relief effecting a reinstatement of employment and salary benefits retroactive to employment termination date, where his employment was terminated by a State public official, acting under color of law, and the termination was accompanied by publicly disseminated defamatory and false accusations which constituted an attack on the employee's good name, reputation, honor and integrity, where the employee was given neither notice nor a hearing as to the defamatory accusations?

STATEMENT OF THE CASE

During his entire adult life, petitioner has been engaged in the public educational system of Louisiana first as a teacher, and thereafter in the policy making process of the Louisiana Department of Public Education. He was first employed in 1960 by the State Department of Education and occupied various positions. In 1970 he was nominated as supervisor of the guidance program of the State Department of Education charged with the sensitive and important duties of assisting, guiding and coordinating the efforts of educators of the State of Louisiana to better develop the overall public educational system of the State. Thereafter he was promoted to the position of Supervisor of Science of public education in Louisiana.

In 1972 defendant Louis J. Michot was elected Superintendent of Education of Louisiana and as such petitioner's superior. The quarterly personnel evaluation ratings since Michot's ascendancy to Superintendent relating to petitioner were of the highest order, petitioner be rated as "excellent", and was rewarded for such competency by Michot by repeated promotions and enlargement of responsibilities. Among the latest official evaluation of petitioner's competence, loyalty and integrity included the following statement:

> "I believe that Lloyd Smith, from my observations and professional opinion, is one

of the most capable directors of the Department. He has the experience and the maturity and continues to demonstrate leadership."

Suddenly, without prior warning or notice, without a hearing or an opportunity for a hearing, and for reasons best known to the Superintendent, on May 15, 1975, defendant Michot terminated petitioner's employment and in doing so Michot made repeated shrill public statements of his reasons for discharging or terminating petitioner's employment. These statements or accusations against petitioner were consummately, peculiarly and indigenously injurious to petitioner as a career educator. Among the accusations, disseminated through the print and electronic media, were the following:

"There was a serious question of his *loyalty* to *me* and *to the programs* that we are trying to foster in the Education Department."

"It was simply a question of *Smith's loyalties.*"

"If I am to do my job, to provide the best education possible for Louisiana's children, I must *have men loyal to me,* to the *concepts of education,* and to *their method of implementation* that I believe in. Otherwise, it would be impossible for me to do my job correctly."

"But it became apparent that Smith was *not working* to *carry out my* programs. It was simply a question of *Smith's loyalties.*"

Defendant Michot also assailed petitioner's competency. In his complaint for judicial redress, petitioner asserted that Michot thus portrayed petitioner "as one whose sense of loyalty is attached to himself or others than his superiors in the Department of Education to the detriment of education in Louisiana. Such a portrayal constitutes a peculiar badge of infamy which marks your plaintiff as a poor risk, a potential troublemaker, a traitor to the educational aspirations of the citizens of Louisiana and as an unreliable ally among the ranks of career educators". Asserting that his honor, integrity, and good repute as a professional career educator had been assailed without a hearing, petitioner sought the relief of reinstatement to his employment status retroactive to the date of the termination of his employment "together with all of the emoluments of that position including compensation at the rate of EIGHTEEN THOUSAND NINE HUNDRED AND NO/100 ($18,900.00) DOLLARS per year and reasonable attorney fees of not less than FIVE THOUSAND AND NO/100 ($5,000.00) DOLLARS". Among the "emoluments" of his position were retirement benefits including the compensation rate and the commencement date of such retirement benefits.

None of the operative facts alleged were placed in dispute. In fact, essentially all of the alleged facts were admitted and supporting affidavits as to them went unchallenged. Petitioner requested summary judgment. This was denied. Finally, on April 19, 1978, the District Court sua sponde ordered the dismissal of petitioner's complaint. Misconstruing petitioner's sought after

remedy, the District Court held it had no jurisdiction "to grant the plaintiff monetary damages under the facts and circumstances of this case", though petitioner simply sought reinstatement and back pay, and requested no *damages*.

Petitioner appealed. On appeal the United States Court of Appeals, Fifth Circuit, affirmed the dismissal of the District Court but for different reasons. Essentially the appellate court held that the undisputed and indisputable slanderous statements inflicted on petitioner did not rise to a "constitutional level" within the contemplation of Section 1983 and that petitioner's remedy "lies in a state defamation suit", thus denying Smith's 1983 remedy because of the alleged existence of state law remedies.

SUMMARY OF ARGUMENT

There is no dispute of fact as to the employment of petitioner as a career educator with the Louisiana Department of Education. There is no dispute over the fact that the Superintendent of Education terminated petitioner's employment. There is no dispute over the fact that in terminating petitioner's employment this state official publicly scandalized petitioner by accusing him of gross disloyalty — disloyalty to the Superintendent of Education and to the educational programs involving all the educable citizens of Louisiana — and further scandalously reflected upon petitioner's competence as a career educator. There is

no dispute over the fact that these accusations were false. There is no dispute over the fact that no hearing or an opportunity for a hearing was ever granted to petitioner so that he might defend to these scandalous charges and vindicate his honor, integrity and good repute.

"Where a person's good name, reputation, honor or integrity are at stake because of what government is doing to him, notice and an opportunity to be heard are essential" *Wisconsin v. Constantineau*, 400 U.S. 433, 91 S.Ct. 507. See also *Board of Regents v. Roth*, 92 S.Ct. 2701; *Goss v. Lopez*, 95 S.Ct. 729. Petitioner's dismissal, therefore, exists in violation of his constitutional liberty. As such, as a matter of law, he is entitled to the judicial remedy which he seeks, i.e., (a) reinstatement to employment retroactive to date of termination together with back pay of EIGHTEEN THOUSAND NINE HUNDRED AND NO/100 ($18,900.00) DOLLARS per year and the emoluments and benefits of his employment status, (b) an opportunity to be heard and thus to vindicate his good reputation and integrity or else an official retraction of the scandalous accusations and, (c) reasonable attorney fees of not less than FIVE THOUSAND AND NO/100 ($5,000.00) DOLLARS.

ARGUMENT

From *United States v. Lovett*, 328 U.S. 303, 66 S.Ct. 1073 to *Paul v. Davis*, 424 U.S. 693, 96 S.Ct. 1155, there has

emerged, buttressed by consistency, the constitutional principle that

> "Where a person's good name, reputation, honor or integrity is at stake because of what the government is doing to him, notice and an opportunity to be heard are essential."

Petitioner has been denied of this constitutional liberty. And thus far he has been denied of judicial redress over such a deprivation of his liberty. The appellate court's decision, in dismissing petitioner's complaint, instances but a mechanical application of the legal concept of "badge of infamy". The opinion does not attribute to that concept the elasticity necessary to effectively assess the stigmatizing quality of scandalous statements in their various contexts. The false, scandalous statements uttered about petitioner constitute a peculiar badge of infamy. It is a "badge of infamy" peculiar to a career educator such as petitioner. When petitioner's superior stated that petitioner was disloyal "to me" and disloyal "to the programs that we are trying to foster in the education department" and that such disloyalty undermines the education of "Louisiana's children", he marked petitioner as a "traitor to the educational aspirations of the citizens of Louisiana" as a "poor risk", as a "potential troublemaker" and as an "unreliable ally among the ranks of career educators". Defendant Michot also placed petitioner's competence in question by stating that his competence was one of the factors that he considered

in terminating petitioner's employment. Unquestionably such scandalous statements "stigmatized" petitioner in the eyes of Louisiana parents interested in providing quality education for their children. These statements furthermore "stigmatized" petitioner in the eyes of public officials responsible for employing the services of career educators and "stigmatized" him in the eyes of other career educators, who would be inclined to shun petitioner as being one who had fallen from grace of public officials who had the duty to hire and fire career educators. Such statements, therefore, necessarily "seriously impaired" petitioner's chance to earn a living. This type official conduct is what was condemned in *United States v. Lovett*, supra. This same type "badge of infamy" was recognized and condemned in *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 71 S.Ct. 624. The fact that the disloyalty question presented in *Lovett* and *McGrath* related to political beliefs does not on that account render the disloyalty question presented in petitioner's case less peculiarly damaging to petitioner.

Goss v. Lopez, 419 U.S. 565, 95 S.Ct. 729 recognizes the variability and elasticity in its application of the legal concept of "badge of infamy" and eschews a balancing of the "weight" of the loss as a test of the right to a remedy under Section 1983. It is the *nature* of the interest at stake which determines the applicability of the due process clause generally in such cases. Petitioners in *Goss* were young students who had been suspended for ten days from attending public school under a

charge of having engaged in "disruptive and disobedient conduct". Answering the contention that these young students were not subjected to "severe detriment or grievous loss" sufficient to rise to constitutional level so as to justify the remedy sought, the court observed: (95 S.Ct. at P. 737)

> "Appellants' argument is again refuted by our prior decision; for in determining 'whether due process requirements apply in the first place, we must look not to the weight but to the *nature* of the interest at stake'. Board of Regents vs. Roth * * *. But the length and consequent severity of a deprivation, while another factor to weigh in determining the appropriate form of hearing, *'is not decisive of the basic right'* to a hearing of some kind."

Defendant Michot's conduct has resulted in the defamation of petitioner's good repute, honor and integrity. It has resulted in the loss of employment from July 1975 to May 1976 and the consequent loss of his salary at the rate of EIGHTEEN THOUSAND NINE HUNDRED AND NO/100 ($18,900.00) DOLLARS per year, plus an impairment of retirement and other fringe benefits. If the denial of ten days in school rises to a constitutional level within the contemplation of the Fourteenth Amendment and Section 1983, certainly the loss of one year's employment as sustained by petitioner is possessed of the same constitutional quality justifying judicial relief.

As the court observed in *Paul v. Davis*, 96 S.Ct. at 1165:

> "It is apparent from our decisions that there exists a variety of interests which are difficult of definition but are nevertheless comprehended within the meaning of either 'liberty' or 'property' as meant in the due process clause. These interests attain this constitutional status by virtue of the fact that they have been initially recognized and protected by state law, and we have repeatedly ruled that the procedural guarantees of the Fourteenth Amendment apply whenever the State seeks to remove or significantly alter that protected status."

Louisiana courts have determined that every man has an inalienable right to be protected from defamation as much as from assault and bodily harm, since his reputation is his property. *Kennedy v. Item Co.*, 213 La. 347, 34 So.2d 886; Louisiana Civil Code Article 2315. Defendant Michot has assailed petitioner's reputation in an area that is of overriding significance to petitioner. He has been defamed and stigmatized as a career educator. His status as a career educator is the product of a lifetime work effort. It is his most valuable property possession. Michot has defamed him while acting under color of state law and as an incident to the termination of his employment. Thus, the State of Louisiana, acting through Michot, has attached "a

badge of infamy" to petitioner. In such a case, due process comes into play. "The right to be heard before being condemned to suffer grievous loss of any kind, even though it may not involve the stigma and hardships of a criminal conviction, is a principle basic to our society". *Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 168, 71 S.Ct. 624, 646.

Petitioner's "good name, reputation, honor and integrity" were assailed by Michot and thus were at stake in the matter of his employment termination. This is the precise liberty rights that are designed to be vindicated by Section 1983.

Michot was defeated at the polls. His successor on May 10, 1976, employed petitioner. The Court of Appeals relied upon such employment as a basis to deny the judicial redress sought by petitioner. In so doing, the appellate court said that "if any stigma attached as a result of this statement, it was not significant enough to prevent Michot's successor from rehiring Smith in a better paying position", and then proceeded to dismiss petitioner's complaint. But such a statement does not address the inherent defamatory content of the statement nor petitioner's legal right. Such a hindsight assessment, based on the fortuity of Smith's reemployment by Michot's successor, is not a valid assessment of the abrasive disparagement of petitioner as a person. It may well be that Michot's successor possessed peculiar and intimate knowledge of petitioner's integrity, honor and competence, and thus either ignored or rejected Michot's false statements as to petitioner's good name,

reputation, honor and integrity as a career educator. But what about the countless, upon countless thousands of Louisiana citizens who read and heard the slanderous statements made by Michot? To them the image of professional incompetency, of a poor risk, of a potential trouble-maker, and of a traitor to the educational aspirations of the citizens of Louisiana lingers on. It is more than likely that these Louisiana citizens attribute petitioner's reemployment to petitioner's political plot or prowess, and more than likely believe that his reemployment is but a reward for his supposed political activities. Thus, the court's hindsight assessment of the impact which the defamatory statements had upon petitioner's good reputation, integrity, good name and honor is not only invalid but could well be disastrously misleading and certainly in this case has resulted in the disastrous denial of his right to vindication.

The appellate court relied on *Paul v. Davis*, supra, as a basis to affirm the dismissal of petitioner's case. Such reliance is misplaced. *Paul v. Davis* simply stands for the proposition that defamation *alone* by a public official does not give rise to an action under 1983. Such defamation, however, is actionable where it is accompanied by employment termination as it was in this case. When the defamatory statements are disseminated and false as they were in petitioner's case, and are accompanied by termination, such conduct is wrongful absent a hearing. *Codd v. Belger*, 97 S.Ct. 882.

The appellate court's further statement that plaintiff's remedy "lies in a state defamation suit" betrays a fatal flaw in the rationale of the court's decision. If petitioner was defamed, as the undisputed facts demonstrate that he was, and if the defamation was accompanied by employment termination as the undisputed facts demonstrate, then the employment termination is constitutionally impermissible and petitioner is therefore entitled to relief under Section 1983. It is so well settled that no citation of authority is necessary, that 1983 is supplemental to any state remedies that might be available to an injured person. Thus, available state remedy cannot operate to defeat the remedy provided by Section 1983.

CONCLUSION

Petitioner's employment in a responsible position with the Department of Education was terminated and the termination was accompanied by public false statements that pervasively assailed his good reputation, integrity, honor and competency as a career educator. As such he is entitled to judicial relief under Section 1983. The relief requested by petitioner consists of (a) the right to a hearing so as to prove the falsity of the charges and thus vindicate his good name or absent a hearing, that there be an official retraction of the false statements made against his good repute, (b) that he be reinstated to his employment status retroactive to the date of his employment termination, together with all the emoluments of that office, including retirement benefits, etc., and back pay at the rate of EIGHTEEN THOUSAND NINE HUNDRED AND NO/100 ($18,900.00) DOLLARS per year, and (c) that reasonable attorney fees of FIVE THOUSAND AND NO/100 ($5,000.00) DOLLARS be awarded on account of the wrongful termination.

Petitioner understands that the judicial time of the court is at a premium. But action of the court on his case will not require an inordinate expenditure of judicial time, because (a) the law applicable is clear, doubtless, and simple, (b) the operative facts are not in dispute and have never been in dispute, and (c) the court may resolve the question presented and vindicate petitioner's constitutional right by a per curiam opinion directing the Court of Appeals, Fifth Circuit to grant petitioner's motion for summary judgment for the relief requested.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that three copies of the above and foregoing application for writs have this day been forwarded to Mr. Arthur G. Thompson, attorney for defendant, 1116 Pierre Avenue, Shreveport, Louisiana, 71103, by depositing same in the United States Mail, postage prepaid, and properly addressed.

Lafayette, Louisiana, this ____day of February, 1979.

J. MINOS SIMON

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 78-2049

LLOYD C. SMITH,
Plaintiff-Appellant,

versus

LOUIS J. MICHOT, SUPERINTENDENT OF EDUCATION, DEPARTMENT OF EDUCATION, STATE OF LOUISIANA,
Defendant-Appellee.

Appeal from the United States District Court for the Middle District of Louisiana

ON PETITION FOR REHEARING
(November 6, 1978)

Before MORGAN, CLARK, and TJOFLAT, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed

in the above entitled and numbered cause be and the same is hereby denied.

ENTERED FOR THE COURT:
/s/ CHARLES CLARK
United States Circuit Judge

[Filed: Nov. 6, 1978]

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 78-2049
Summary Calendar*

LLOYD C. SMITH,
Plaintiff-Appellant,

versus

LOUIS J. MICHOT, Superintendent of Education, Department of Education, State of Louisiana,
Defendant-Appellee.

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* Rule 18, United States Court of Appeals, Fifth Cir.; *see* Isbell Enterprises, Inc. v. Citizens Casualty Co., 431 F.2d 409 (5th Cir. 1970).

Appeal from the United States District Court for the Middle District of Louisiana

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(October 10, 1978)

Before MORGAN, CLARK, and TJOFLAT, Circuit Judges.

PER CURIAM:

On May 15, 1975, Lloyd Smith was discharged from his position in the Louisiana Department of Education. At the time of Smith's dismissal, Louis J. Michot, the State Superintendent of Education, stated to the news media that Smith was terminated because of his disloyalty to Michot and the programs Michot espoused. Smith subsequently brought suit in district court under 42 U.S.C. §1983, claiming that his dismissal without a hearing violated the due process clause of the fourteenth amendment. Smith sought reinstatement, back pay, and an injunction restraining Michot from taking further unconstitutional actions against him. After the suit was filed, Michot was defeated in his bid for reelection, and the new superintendent reemployed Smith with an increase in salary.[1] The district court dismissed the suit. We affirm.

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1 The district court correctly held that since Smith has been rehired, his claim for reinstatement is moot. The issue concerning his entitlement to back pay and other fringe benefits remains, however.

In order to state a claim for relief under the due process clause, a plaintiff must demonstrate that the State has deprived him of some liberty or property interest without a proper hearing. Board of Regents v. Roth, 408 U.S. 564, 569, 92 S. Ct. 2701, 2705, 33 L.Ed.2d 548, ____ (1972). Smith did not establish either interest here.

Smith's employment status was a protected property interest only if he had an express or implied right to continued employment. Bishop v. Wood, 426 U.S. 341, 343, 96 S.Ct. 2074, 2077, 48 L.Ed.2d 684, ____ (1976). Here it is uncontroverted that Smith was a non-tenured employee serving at the pleasure of the Superintendent of Education. Thus, Smith's position in the Department of Education was not a property interest protected by the fourteenth amendment.

Smith also claims that Michot infringed the liberty guaranteed him by the fourteenth amendment. He asserts that Michot's charge of disloyalty will substantially impede his efforts to seek other employment and that due process therefore required Michot to hold a hearing prior to the dismissal. As the Supreme Court noted in *Roth*, "the range of interests protected by procedural due process is not infinite." 408 U.S. at 570, 92 S.Ct. at 2705, 33 L.Ed.2d at ____. A State's actions run afoul of the due process guarantees when they attach a "badge of infamy" to the citizen and the State fails to provide a hearing to allow for refutation of the charges. Wisconsin v. Constantineau, 400 U.S. 433,

437, 91 S.Ct. 507, 510, ____ L.Ed.2d ____, ____ (1971). The imputation of disloyalty to Michot here clearly did not attach a "badge of infamy" to Smith; the Superintendent in his statement on Smith's discharge merely said that Smith disagreed with his educational policy. If any stigma attached as a result of this statement, it was not significant enough to prevent Michot's successor from rehiring Smith in a better paying position. The facts here indicate that Smith's remedy, if any, lies in a state defamation suit; the injury Smith suffered does not rise to the level of a constitutional violation. *See* Paul v. Davis, 424 U.S. 693, 96 S.Ct. 1155, 47 L.Ed.2d 405 (1976).

Smith's dismissal without a hearing did not violate the due process clause of the fourteenth amendment. The decision of the district court is

AFFIRMED.

APPENDIX C

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

LLOYD C. SMITH

versus C.A. No. 75-350

LOUIS J. MICHOT, SUPERINTENDENT OF EDUCATION, DEPARTMENT OF EDUCATION, STATE OF LOUISIANA

MEMORANDUM OPINION

Plaintiff, Lloyd C. Smith, brings this suit claiming deprivation of Fourteenth Amendment rights and seeking damages and other relief which he claims he is entitled to under the provisions of 42 U.S.C. §1983.

Plaintiff was employed by the Louisiana Department of Education in 1960 where he remained employed until his employment was terminated by the then Superintendent of Education for the State of Louisiana, Louis J. Michot, on May 15, 1975. This suit was brought as a result of that termination and as a result of what the plaintiff alleges to have been a violation of his civil rights in connection with the employment termination.

It is the plaintiff's contention that at the time of his termination from employment with the Department of Education, the Superintendent, and defendant herein, Louis J. Michot, made certain derogatory remarks

about him, pertaining to his "loyalty" to the programs which the Superintendent of Education was "trying to foster." Plaintiff quotes Mr. Michot as saying "But it became apparent that Smith was not working to carry out my programs. It was simply a question of Smith's loyalties." It is plaintiff's position that these comments degraded his professional competence as a career educator. Plaintiff asserts that these statements made by Mr. Michot are "absolutely false" but that Mr. Michot circulated them as being truthful, and that the circulation of these remarks "deprived your complainant of his honor, integrity and good repute as a professional career educator without just cause and without a hearing and has thus denied complainant of substantive and procedural due process contrary to the Constitution and laws of the United States."

Plaintiff then asserts that the position of employment from which he was discharged was a position paying him $18,900 per year. In the prayer of plaintiff's complaint, he prays "that a judgment or injunction do issue in due course enjoining, restraining and prohibiting the said Louis J. Michot from depriving or attempting to deprive complainant of his honor, integrity and good repute as a professional career educator and of his employment as Bureau Director of the Department of Education of Louisiana without a meaningful hearing as required by the Constitution and laws of the United States and further enjoining and mandating the said Louis J. Michot to reinstate your complainant to his position of Bureau Director of the Department of

Education of the State of Louisiana retroactive to the date of termination together with all of the emoluments of that position including compensation at the rate of EIGHTEEN THOUSAND NINE HUNDRED ($18,900.00) DOLLARS per year and reasonable attorney fees of not less than FIVE THOUSAND AND NO/100 ($5,000.00) DOLLARS.

Thus, as seen by plaintiff's complaint, he seeks first, a "meaningful hearing" as to the reasons for his discharge, and he seeks a mandatory injunction which would restore him to his previous position of employment, and lastly he seeks monetary damages which he claims resulted from his discharge.

After several pre-trial conferences, this Court, on May 19, 1977, denied plaintiff's motion for summary judgment, and then, at a pre-trial conference held on January 12, 1978, this Court, on its own motion, raised the question of jurisdiction in this case and took that question under submission pending further proceedings. At a subsequent pre-trial conference, this Court was advised that the plaintiff, Lloyd Smith, who was terminated on July 22, 1975, was reemployed by the Louisiana Department of Education on May 10, 1976, in the capacity of Acting Director of Secondary Education at a salary of $20,000 per year. On September 1, 1977 he received a $900 pay increase which brought his salary to $20,900. On October 3, 1977, he became Assistant to the Associate Superintendent for Research and Development in which job, on January 6,

1978, he received a pay increase bringing his salary to $22,900. He is presently employed in that capacity by the same Department of Education from which he was terminated on July 22, 1975. Prior to his reemployment on May 10, 1976, after a state-wide election, the defendant, Louis J. Michot, was replaced as State Superintendent of Education by the present incumbent in that office, Mr. Kelly Nix.

Now, after due consideration of the record in this case, and as a result of the pre-trial conferences held in this matter, this Court concludes (1) that the plaintiff's claim for injunctive relief requiring his reemployment is moot; (2) that to require the State Department of Education to give him a hearing to refute what he claims to be false charges made against him by his prior employer would be a vain and useless thing and renders this request for relief moot; and (3) this Court has no jurisdiction to grant the plaintiff monetary damages under the facts and circumstances of this case.

Insofar as the question of reemployment is concerned, that matter is obviously moot. He was, in fact, reemployed on May 10, 1976, as Acting Director of Secondary Education at a salary considerably above that which he was earning at the time of his discharge on July 22, 1975, and since that time, he has advanced in his employment to the position of Assistant to the Associate Superintendent for Research and Development which carries a salary $4,000 per year above that which he was making at the time of his discharge. Ob-

viously, no order of this Court is required to reinstate him in his employment.

Insofar as the right to a "due process hearing" is concerned, there is no question but that the plaintiff, by virtue of his position alone, was not entitled to such a hearing. He was not a tenured employee, and therefore his employer, under ordinary circumstances, had an absolute right to terminate his employment at will. Indeed, even the fact of statements having been made which might have reflected on his reputation, standing by themselves, are insufficient to invoke the procedural protection of the due process clause. See *Paul v. Davis*, 96 S.Ct. 1155 (1976). If plaintiff's reputation was thereby damaged, he may have a simple state court defamation claim since there is no diversity of citizenship involved, but he cannot invoke the procedural protection of the due process clause. If the plaintiff is entitled to a due process hearing because of the statements made by his employer, he would be entitled to it only because the complained of statements were made in connection with and in the course of the termination of his employment. That, of course, has been alleged by the plaintiff in this case. But even if such a due process hearing is required, it is required "solely to provide the person an opportunity to clear his name." See *Codd v. Velger*, 97 S.Ct. 882, 884 (1977). The contemplated hearing in such a case cannot involve the question of reemployment or damages, but must be confined to the question of whether or not the statements made were true for the purpose of permitting the plaintiff to refute the charges and thus "clear

his name." If, in such a case, damages are sought by the plaintiff, he must seek such damages in a state court defamation suit. Thus, under the jurisprudence as it presently stands, it would seem that the plaintiff might be entitled to a hearing simply for the purpose of permitting him to refute the alleged statements made against him, and to "clear his name" so that his reputation as an educator would be reestablished and he would not be prejudiced in connection with future employment. But the facts of this case make such a hearing unnecessary. It is obvious from the facts of this case that the reputation of Mr. Smith has been duly reestablished if indeed it was ever damaged. He has, in fact, been reemployed in the same department from which he was terminated, and the progress which he has made in his employment is ample evidence of the fact that he has not been damaged in his employment and that his reputation as an educator is intact. Thus, to order such a "due process hearing" in this case would obviously do more harm than good. Mr. Smith's name and reputation have obviously been dramatically cleared by his reemployment and subsequent advancement, and therefore, whether or not he was given a hearing at the time of his discharge, which hearing would have had to be limited to an opportunity to "clear his name," becomes entirely moot. He has obviously "been heard" and found not to be wanting.

That leaves only the last demand made by the plaintiff. That demand is for monetary damages. In *Paul v. Davis*, supra, the Court faced the question of whether

or not defamation of a person by the State, standing alone and apart from other governmental action, stated a Section 1983 claim. The Supreme Court answered "no" to that question. The Court stated that defamation of a citizen by an official of the State does not transfer that otherwise state defamation action into a 1983 action simply because it was a state official who made the statement. It does not, of course, mean that the plaintiff does not have a right to seek damages for defamation in the proper State Court. Since the plaintiff was not a tenured employee, and thus, under ordinary circumstances, was not entitled to any hearing prior to his discharge, and since, when the statements complained of by the plaintiff were made in connection with the termination of his employment, the hearing to which he may have been entitled at the time, was, by law, limited to a hearing for the purpose of "clearing his name," and since both the matter of reinstatement and the matter of a hearing, as hereinbefore dealt with, are moot, there is nothing left but a pure and simple defamation of character claim, over which this Court, absent diversity of citizenship, has no jurisdiction. The mere fact that the plaintiff might have been entitled to a due process hearing for the limited purpose of "clearing his name" cannot transfer an otherwise state defamation action into a Section 1983 case. The only federal civil right that the plaintiff may have had was the right to a hearing which could not involve the question of claimed monetary damages. Thus, failure to accord the plaintiff that right to a limited hearing could not give rise to a federal claim for damages under Section 1983 which did not and could not have existed had the hearing been granted. And of course, the plaintiff is in no way prejudiced by this holding insofar as any damage claim he may have for defamation of character. He has that right in the proper state court forum. Therefore, for these reasons, a judgment will be entered herein denying the demands of the plaintiff and dismissing this suit at plaintiff's cost.

Baton Rouge, Louisiana, April 19, 1978.

/s/ E. GORDON WEST
UNITED STATES DISTRICT
JUDGE